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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ASHLEE S., a Person Coming
Under the Juvenile Court Law.

B293039
(Los Angeles County
Super. Ct. No. 18LJJP00053A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

HEATHER S.,

Defendant and Appellant.

APPEAL from findings and orders of the Superior Court of
Los Angeles County. Steven E. Ipson, Juvenile Court Referee.
Affirmed in part and reversed and remanded in part with
directions.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

Heather S. (mother) challenges the juvenile court's jurisdictional findings and dispositional orders made regarding her daughter, Ashlee S. (Ashlee, born Oct. 2013). We affirm the juvenile court's jurisdictional findings as they are supported by substantial evidence. However, because the Los Angeles County Department of Children and Family Services (DCFS) did not provide the juvenile court with evidence of reasonable efforts that it made to prevent Ashlee's removal (Cal. Rules of Court, rule 5.690(a)(1)(B)(i)), and the juvenile court failed to state the facts upon which it relied to remove Ashlee from mother's custody (Welf. & Inst. Code, § 361, subd. (e)),¹ we reverse the juvenile court's dispositional orders and remand the matter for a new disposition hearing.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

Family Background

This family consists of mother, Ashlee, and Ashlee's father, Andrew S. (father).² Mother and father separated in around 2016. Thereafter, mother and Ashlee lived with Ashlee's maternal grandparents in a three-bedroom home. Mother and father remained on friendly terms. On occasion, mother brought Ashlee to father's home and the two of them spent the night there, with Ashlee and mother sharing Ashlee's bedroom, while father had his own bedroom. In addition, father had a paternal-type relationship with a 14-year-old boy named Tyler. While father was not Tyler's father, he had been involved in Tyler's life for many years and also briefly dated Tyler's mother, Tina S. (Tina). With Tina's consent, Tyler sometimes spent the night at father's home in his own bedroom.

Detention Report (Jan. 23, 2018)

On January 5, 2017, DCFS received a referral alleging that mother had sexually abused Tyler in father's home while then four-year-old Ashlee was present. According to the referral, the sexual abuse occurred over the course of the prior evening. Earlier in the evening, mother, Ashlee, and Tyler were all with father at father's home. Mother took Ashlee and Tyler to dinner while father stayed home. Mother consumed alcohol during dinner and was intoxicated when she drove back to father's home. Mother continued to consume alcohol. Later in the evening, Tyler was asleep in the same bedroom as mother and Ashlee, who was asleep. While on Ashlee's bed, mother hugged and told

² Father is not a party to this appeal.

Tyler, “I love you, I will do anything.” She then pulled his head towards her body and “forced him to kiss her,” including her breasts. Tyler later “put his finger in [mother’s] vagina” and “hump[ed] the bed.” After, Tyler felt “disgusted” about what had occurred with mother and called his own mother, Tina, to pick him up. When Tina arrived, Tyler disclosed to her what had occurred and she called the police.

Following the referral, two social workers went to mother’s home, where they spoke with mother, Ashlee, and the maternal grandparents. Mother denied the allegations that she had consumed alcohol over dinner, drove back to father’s home intoxicated, and sexually abused Tyler. She said that she had gone to father’s home with Ashlee to cheer up and support father, as one of his relatives had recently passed away. Tyler was also at the house, and the four of them all went to the movies together before returning to father’s home to spend the night. Mother stated that she had always treated Tyler “like a son.” She denied having an alcohol abuse problem, although she did admit receiving a “DUI” (driving under the influence) some years earlier.

Ashlee said that she saw Tyler five days earlier and that she had gone to the movies with him. She also stated that Tyler slept in a different bedroom than her and mother when they all spent the night at father’s home. The social workers questioned whether Ashlee’s statements as to when events occurred were “off due to her age and ability to determine time.”

The maternal grandmother knew of the sexual abuse allegations in the referral and considered them to be untrue. She also did not believe that mother had an alcohol abuse problem or would ever drive while intoxicated. At the same time, she

claimed that Tyler had engaged in “sexualized behavior” sometime in the past, such as when she had observed him “rolling on the ground and . . . humping the floor and . . . laugh[ing].”

On January 18, 2018, DCFS learned that the Los Angeles Police Department had arrested mother on a warrant related to the sexual abuse referral and had taken Ashlee into protective custody based upon the arrest. A social worker went to the Devonshire police station, where mother and Ashlee were still located.

The social worker spoke with Los Angeles Police Detective Kellie Kropfl, who provided an account of what Tyler had earlier told the police. On the evening in question, mother took Tyler and Ashlee to dinner. Tyler observed mother drink about four margaritas during dinner, which concerned him even though he did not contact father. Mother then drove the children back to father’s home, where she dropped them off before heading off on an errand. Mother returned to the home with a bottle of Tequila. Sometime later, everyone went to bed, including father, a paternal uncle, Michael S. (Michael), who was also at the home, and mother, who went into Ashlee’s bedroom. While in his bedroom, Tyler realized that his mobile telephone was missing. He went to Ashlee’s bedroom to ask mother if he could borrow hers in order to call his telephone. Mother replied that it was late and he should lie down on Ashlee’s bed with her and Ashlee.

While they were lying together on the bed, mother told Tyler, “I love you and I’ll do anything for you.” She then pulled his head towards her face and “shoved her tongue in his mouth.” Mother also exposed her breasts and pushed Tyler’s face onto one of them. Following this, mother pushed Tyler’s head down to her

vaginal area while moving her underwear to one side. Tyler believed mother wanted to have sexual intercourse with him, but he could not, so instead he put his index finger inside her vagina before removing it. Tyler then simulated sexual intercourse on mother's leg until he ejaculated. Afterwards, Tyler ran out of the room "[feeling] disgusted [about] himself," found his telephone in the living room, and went outside to call Tina.

In addition to this information, Detective Kropfl stated that mother currently had a suspended driver's license and both parents refused to provide any statements to the police.

The social worker then spoke with mother. Mother admitted that she had not gone to the movies with father, Ashlee, and Tyler on the evening in question as she had originally claimed. Instead, father had stayed home while she drove Ashlee and Tyler to a restaurant for dinner; after dinner, she drove them all back to father's home. Mother admitted that she had driven the children with a suspended driver's license. She denied that she had consumed any alcohol during the evening.

Later, the social worker spoke with father by telephone. He stated that he would consent to the maternal grandparents caring for Ashlee while mother was in police custody.

Finally, DCFS learned about mother's criminal history. Between 2005 and 2011, she had multiple arrests and convictions for drinking and driving crimes, including driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)), driving with a blood alcohol concentration (BAC) of 0.08 per cent or higher (Veh. Code, § 23152, subd. (b)), and driving with a suspended license due to a driving under the influence conviction (Veh. Code, § 14601.2). Her most recent conviction was in 2011 for driving with a BAC of 0.08 per cent or higher with prior convictions.

Section 300 Petition; Detention Hearing

On January 22, 2018, DCFS filed a section 300 petition on behalf of Ashlee. Pursuant to subdivisions (b)(1) and (d), the petition alleged that mother's sexual abuse of Tyler and father's failure to protect Ashlee from the abuse placed Ashlee at substantial risk of serious physical harm and sexual abuse.

At the detention hearing on January 23, 2018, the juvenile court released Ashlee to father on the condition that he continue the appropriate plan of having the child live with her maternal grandparents. The juvenile court detained Ashlee from mother while granting her monitored visits. It also ordered DCFS to provide mother with referrals that included drug and alcohol testing sites.

Jurisdiction/Disposition Report (Apr. 12, 2018)

On April 4, 2018, a social worker spoke with mother over the telephone. She denied the petition's allegations that she had driven with Ashlee while intoxicated and that she had sexually abused Tyler. She believed that DCFS was trying "to make [her] out to be alcoholic" in its reports.

Addendum Report (Apr. 23, 2018)

On April 5, 2018, a social worker met with mother at a DCFS office. Mother asserted what she believed to be true about Tyler. She had learned from Tina's boyfriend that Tyler was supposed to be home-schooled, but was actually left home alone all day. She believed that Tyler smoked marijuana and drank alcohol. Michael had told her that Tyler would show him "pornographic stuff" on his telephone. When Tyler would stay over at father's home, he would often call Tina at around 2:00 a.m. or 3:00 a.m. and ask for her to pick him up. She wondered if Tyler was "jealous" of Ashlee, as Tyler had only

learned last year that father was not his biological father. She believed that she had “acted as a mother” to Tyler and “never tried to be his buddy.” Once, Tyler had asked her while she was pregnant with Ashlee if she would breastfeed. On another occasion, she caught him staring at her covered breasts while they were at a swimming pool.

Mother also discussed the evening in question. She brought Ashlee to father’s home so that they could “go to a movie and hang out.” She repeated her original claim that father had joined her, Ashlee, and Tyler when they went out; they went to a movie and then to a Mexican restaurant before returning to father’s home. When they arrived at father’s home, Michael was there playing video games. Tyler and Ashlee joined Michael, while father went to his bedroom to go to sleep. Ashlee later felt tired and went to sleep with mother, while Tyler stayed up with Michael. Mother later learned from Michael that Tyler had showed him pornography on his phone during this time. Mother then heard Tyler open her bedroom door; she told him to shut the door. Sometime later, Tyler called Tina.

When asked about her criminal history, mother stated that she had stopped drinking alcohol after her 2010 conviction and later enrolled in a substance abuse rehabilitation center, followed by a six-month outpatient treatment program. She also stated that she had completed a DUI program, continued to attend alcoholics anonymous (AA) meetings, and had recently enrolled in a substance abuse program. She agreed to provide the supporting documentation regarding all of these programs.

On April 20, 2018, the social worker spoke with father over the telephone. He stated that he suffered from nerve pain and mobility issues caused by spinal stenosis in his back and sciatica

in his leg. On the evening in question, father did not join mother, Ashlee, and Tyler because he was in too much pain and could not move around. After mother and the children returned to his home, he went to bed at around 10:00 p.m. He last saw Tyler playing video games with Michael.

First Jurisdiction/Disposition Hearing (Apr. 23, 2018)

At the first combined jurisdiction/disposition hearing, the juvenile court overruled mother's objection pursuant to section 355 that it was wrongly relying upon hearsay statements from Tyler. The juvenile court then dismissed father from the section 300 petition, striking language that he failed to protect Ashlee from mother.

Mother testified. According to mother, she and father had taken both Ashlee and Tyler to a Mexican restaurant on the evening in question and father had driven both ways. Mother described father as "mobile" and contended that he only complained about nerve pain every once in a while; she claimed that father's pain was not "an every-day occurrence." Mother denied consuming any alcohol at the restaurant. She also denied that she sexually abused Tyler later that evening, asserting that none of the alleged conduct occurred while she was in a bedroom with Ashlee.

Following mother's testimony, the juvenile court found that Ashlee was a person described by section 300, subdivisions (b)(1) and (d). It declared Ashlee a dependent of the juvenile court, ordered her removed from mother's custody, and placed her with

father.³ The juvenile court ordered mother to participate in enhancement services, including a drug and alcohol program, a parenting education program, and individual counseling, and to receive a mental health assessment. When making these dispositional rulings, the juvenile court expressly noted that it found mother to be “flat out untruthful” when describing what had occurred.

Last Minute Information for the Court (May 2, 2018)

In late April 2018, DCFS obtained the police report pertaining to the criminal investigation of Tyler’s sexual abuse allegations. In the early morning hours of January 4, 2018, the police received a radio call of “Lewd Acts with a Minor, Just Occurred,” with an address provided. Soon after, two responding officers spoke with Tina and Tyler outside of father’s home. Tina told the officers that Tyler had called her 30 minutes earlier. He was “hysterical” when telling her that mother had been drunk when she “started making out with him, . . . exposed her breasts to him, and . . . made him ejaculate.” She went to father’s home to pick him up and she called the police.

Tyler provided his version of the events. That day, he had been at father’s home visiting father and Ashlee. They were supposed to go out to dinner together, but father was not feeling well. Instead, mother drove Ashlee and Tyler to a restaurant. While there, mother drank three margaritas and started “acting drunk.” While Tyler thought about calling father to pick them up, he was scared that father would be angry with him. Mother

³ The juvenile court deemed father’s plan to have Ashlee continue living with her maternal grandparents to be an appropriate caretaking plan.

then drove back to father's home and dropped the children off before going back out and returning with a bottle of Tequila. She consumed most of the bottle herself, became "loud and obnoxious," told father, Michael, and Tyler how much she loved them, and began "hanging all over them." Father became angry with her and told her to go to bed. She went to Ashlee's bedroom, followed by father and Michael going into their respective bedrooms.

Tyler stayed in the living room watching television until around 1:00 a.m., when he realized that he could not find his mobile telephone. He went into Ashlee's bedroom, where he noticed that Ashlee was asleep. He turned on the light and asked mother if he could borrow her telephone to call his phone. She said he could, but he noticed that her telephone was off and out of power. He plugged it in. Mother then told him to turn off the light and lie down on the bed next to her because it was late. Tyler did so while noticing that mother was wearing a shirt, a bra, and underwear; he was still fully clothed.

While facing each other on the bed, mother wrapped her legs around Tyler and told him she loved him and would do anything for him. She then grabbed Tyler's face, pulled it toward her own, and stuck her tongue in his mouth. She then exposed one of her breasts and pushed his head down to it, with Tyler kissing it. Mother then pushed Tyler's head further down her body towards her vaginal area, at which point, she pulled her underwear to one side, exposing her vagina. Tyler put a finger into mother's vagina, before removing it quickly. She then had him put his body on top of her vaginal area, and he thrustled against the bed until he ejaculated. Tyler felt fearful and embarrassed and told mother that he needed to leave the room to

find his telephone. He ultimately found it in the living room and called Tina, who drove over and called the police.

The officers proceeded to knock on father's front door. Michael answered and was uncooperative, saying that neither mother nor father was home. The officers then enlisted Tina's help. When Tina knocked on the door, father answered, admitted to the officers that mother was there, and stated that she would come to the door once dressed. After father closed the door, the officers could hear mother yelling profanities at father while saying that she would not come to the door. Accordingly, the officers left father's home without speaking with mother.

A few days later, father called Tina and expressed his anger about her contacting the police. He told her that this "would destroy [mother's] life," asked her "why [she] would put Tyler through the hassle of a trial," and stated that, if she pressed criminal charges, mother "was going to say that she 'got drunk and Tyler raped her while she was passed out.'"

On April 26, 2018, a social worker learned from Detective Kropfl that Tina had contacted the police about DCFS's request to interview Tyler, and the district attorney had asked that DCFS not interview Tyler until the criminal investigation was completed.

On May 2, 2018, a social worker spoke with Michael about the evening in question. Michael said that mother, father, Ashlee, and Tyler all went out for dinner. When they returned, mother was talkative and loud, but was not "falling all over the place." He later went to bed. While in his bedroom, he heard Tyler knocking on Ashlee's bedroom door. He then heard "some kind of ruckus," although he did not hear anyone talking, and then he heard Ashlee's bedroom door open and close. When

asked if he knew whether mother used alcohol, Michael replied, “She drinks. I don’t know if she drinks like excessive, like an alcoholic. I don’t know her that well.”

Amended Section 300 Petition; Jurisdiction Hearing

On May 2, 2018, DCFS filed a first amended section 300 petition on behalf of Ashlee. The amended petition contained the original allegations (counts b-1 and d-1) and additional allegations that mother had a history of substance abuse and was a frequent user of alcohol, which placed Ashlee at substantial risk of serious physical harm (count b-2).

At the jurisdictional hearing on the amended petition, the juvenile court dismissed the original petition in light of the filing of the amended petition. It then reversed its prior ruling as to mother’s hearsay objection (§ 355), reasoning that it had overlooked the fact that Tyler’s statements might have been conveyed to multiple persons, resulting in a “hearsay gap.”

The matter was continued for adjudication of the amended petition. The juvenile court informed mother that she could subpoena Tyler and Tina for the hearing.

Last Minute Information for the Court (July 17, 2018)

On July 11, 2018, DCFS learned from the police that attempts to interview Tyler and Tina in connection with its criminal investigation had been unsuccessful. The police did not know if Tina sought to press criminal charges against mother. Because its investigation was stalled, the police stated that DCFS could attempt to contact Tyler through Tina. Later attempts by the social worker to reach Tina were unsuccessful.

In mid-July 2018, DCFS learned that mother had completed some programs in the past. In 2011, she completed a 90-day substance abuse treatment program. In the spring of

2018, she completed a three-month day treatment program, during which time she tested negative for all substances. In early July 2018, she completed a parenting program.
Second Jurisdiction/Disposition Hearing (July 17 and Aug. 6, 2018)

At the second jurisdiction/disposition hearing, the juvenile court revisited mother's hearsay objection to Tyler's statements. Ultimately, the juvenile court determined that Tyler's statements, including his direct statements made to the responding officers and those he made to Tina, which she relayed to the responding officers, were spontaneous statements as defined by Evidence Code section 1240, subdivision (b); therefore, they were sufficient to support a jurisdictional finding against mother, pursuant to section 355, subdivision (c)(1)(A).⁴ The juvenile court then admitted into evidence the DCFS report as well as a letter and some certificates relating to mother's participation in programs.

Following oral argument, the juvenile court sustained the amended section 300 petition. Regarding counts b-1 and d-1, the sustained amended petition alleged that in January 2018, mother

⁴ Section 355, subdivision (c)(1)(A), provides: "If a party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes one or more of the following exceptions: [¶] (A) The hearsay would be admissible in any civil or criminal proceeding under any statutory or decisional exception to the prohibition against hearsay."

had sexually abused Tyler, and that such sexual abuse endangered Ashlee's physical health and safety and placed Ashlee at risk of serious physical harm, damage, danger, and sexual abuse. Regarding count b-2, the amended petition alleged that mother has a history of substance abuse and is a frequent user of alcohol. It also alleged that mother has a criminal history of convictions for alcohol related offenses. And, on January 4, 2018, mother placed Ashlee in a detrimental situation by driving under the influence of alcohol while children were in the car, placing Ashlee at risk of physical and emotional harm, damage, danger, and death.

When rendering its jurisdictional findings, the juvenile court stated: "I think there is ample evidence to sustain this, which the mother's alcohol use, the minor, -- this minor was present, Ashlee [] was present in the room in the bed when the incident occurred between the mother and Tyler. The mother, the statement indicated from the—from the detective that the mother had had about four margaritas during dinner. She later returned with a bottle of [T]equila. It's not clear that she drank it. She had that. [There is] [r]eason to think that she would drink it. [¶] There is actual evidence in the [amended] petition to suffice."

Continuing to disposition, following oral argument, the juvenile court removed Ashlee from mother's custody, finding that she would be in substantial danger if returned to mother's home and that there were no reasonable means to protect her from mother short of removal. Mother was granted monitored visitation.

When rendering its dispositional orders, the juvenile court stated: "I have to say I agree with [DCFS]. I think the sexual

abuse, alcohol, the crux of this case. . . . [T]he sexual abuse [has not] been addressed, yet alcohol is in the process of being addressed; but it appears to be quite a serious, deeply rooted and ongoing problem that has gone back to several years, and because, perhaps because of alcohol; although, not a hundred percent clear that . . . alcohol was the only factor. The mother showed egregious, bad judgment.”

Appeal

Mother timely appealed.

DISCUSSION

Mother challenges the juvenile court’s jurisdictional findings, the removal order, and the disposition order restricting her visitation to monitored.

I. Jurisdictional Findings

A. Applicable law and standard of review

Pursuant to section 300, subdivision (b)(1), a juvenile court may assume dependency jurisdiction where a “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness” due to “the failure or inability of . . . her parent . . . to adequately supervise or protect” her, or “the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse.” (§ 300, subd. (b)(1).) This subdivision requires that three conditions be satisfied: “(1) one or more of the statutorily-specified omissions in providing care for the child . . . ; (2) causation; and (3) “serious physical harm or illness” to the minor, or a “substantial risk” of such harm or illness.” (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 561.)

Pursuant to section 300, subdivision (d), a juvenile court may assume dependency jurisdiction where a parent has sexually abused her child or has placed her child at substantial risk of

sexual abuse, as defined in Penal Code section 11165.1. Penal Code section 11165.1 includes acts involving the touching of a child done for the purposes of sexual gratification, as well as acts described by Penal Code section 647.6. (Pen. Code, § 11165.1, subd. (a).) Penal Code section 647.6 makes it illegal to “annoy[] or molest[]” a child, and typically has been applied to incidents of explicit sexual conduct. (*People v. Kongs* (1994) 30 Cal.App.4th 1741, 1750.) “The deciding factor” as to the statute’s applicability is whether the person “has engaged in offensive or annoying sexually motivated *conduct* which invades a child’s privacy and security, conduct which the government has a substantial interest in preventing’ [Citation.]” (*In re D.G.* (2012) 208 Cal.App.4th 1562, 1571.)

As the parties agree, we review the juvenile court’s jurisdictional findings for substantial evidence. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574–575.) “Under the substantial evidence standard of review, the appellate court does not reweigh the evidence, evaluate the credibility of witnesses, or draw inferences contrary to the findings of the trial court. [Citation.] The appellate court ‘accept[s] the evidence most favorable to the order as true and discard[s] the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact.’ [Citation.] For evidence to be sufficient to support a trial court’s finding, it must be reasonable, credible, and of solid value. [Citation.]” (*In re J.F.* (2014) 228 Cal.App.4th 202, 209.)

B. Substantial evidence supports the findings that mother’s sexual abuse of Tyler in Ashlee’s presence placed Ashlee at substantial risk of sexual abuse and serious physical harm

Ample evidence supports the juvenile court’s jurisdictional findings pursuant to counts b-1 and d-1. In particular, Tyler’s

descriptive statements to Tina and the responding officers provided the juvenile court with sufficient evidence that mother had sexually abused him while Ashlee was present. Moreover, the juvenile court found that mother was “flat-out untruthful” when testifying at the first jurisdiction/disposition hearing.

To the extent mother asks us to reweigh the evidence and rely upon contrary evidence in the appellate record, including her denial that the sexual abuse had occurred, we cannot and will not do so. (*In re I.J.* (2013) 56 Cal.4th 766, 773 [we do not reweigh the evidence or exercise independent judgment; rather, we simply determine if sufficient evidence supports the juvenile court’s findings].)

In urging reversal, mother argues that Tyler’s hearsay statements were uncorroborated and unreliable. We are not convinced. There was no requirement that his statements be corroborated in order to be reliable. And, the juvenile court did not err in finding that Tyler’s statements made to both the responding police officers and to Tina were spontaneous statements, made under the stress caused by his sexual abuse.

Mother further argues that there was insufficient evidence that Ashlee was at risk of being sexually abused, even if mother sexually abused Tyler as he described it. We disagree. Mother’s sexual abuse of Tyler while Ashlee was in the same room constitutes sexually motivated conduct that invaded Ashlee’s privacy and security and therefore fell within the scope of “child molestation,” as that phrase is envisioned by the Penal Code and Welfare and Institutions Code. (See, e.g., *In re Andy G.* (2010) 183 Cal.App.4th 1405, 1414 [the father’s sexual abuse of his son’s teenage half-sisters “evinced, at best, a total lack of concern for whether [his son] might observe his aberrant sexual behavior”].)

C. Substantial evidence supports the juvenile court's finding that mother's substance abuse placed Ashlee at substantial risk of serious physical harm

Mother argues that insufficient evidence supports the substance abuse findings because there was evidence indicating that she had resolved her alcohol problem and had not driven with Ashlee while intoxicated.

In making this argument, mother again asks us to reweigh the evidence, which we cannot, and will not, do. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) Tyler, father, and mother all stated that mother drove Ashlee and Tyler to and from a restaurant while father stayed home, even though mother changed her story at least once. Tyler also stated that mother drank three or four margaritas while at the restaurant before driving them back home, while intoxicated.

Moreover, mother has a criminal history that includes multiple arrests and convictions between 2005 and 2011 for DUI-related crimes. The juvenile court could consider this criminal history when weighing the evidence and determining that Tyler was telling the truth while finding mother's testimony "flat-out untruthful." (See *In re T.V.* (2013) 217 Cal.App.4th 126, 133 ["A parent's past conduct is a good predictor of future behavior"].)

Mother challenges Tyler's statements that she drove home from the restaurant while intoxicated on the grounds that Tyler "was not certified as an expert who would know whether [m]other was intoxicated," and so merely offered "a lay opinion as to her state." However, the juvenile court could reasonably find that Tyler was old enough to notice that mother had consumed a number of margaritas and that the drinks impacted her, as he was 14 years old at the time and likely had some knowledge

about the nature of alcohol. “Because the matter to be determined at the jurisdictional hearing is whether a child is at substantial risk of harm at the hands of a parent due to parental acts or inaction, if that assessment can be made within ordinary experience, no expert is necessary.” (*Laurie S. v. Superior Court* (1994) 26 Cal.App.4th 195, 202.) Mother cites no law to the contrary.

Mother also argues that insufficient evidence supports the substance abuse findings because DCFS failed to present evidence of a specific risk of harm to Ashlee caused by her alleged substance abuse. This argument fails for at least two reasons. First, children under six years of age, such as Ashlee, are “of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety. [Citations.]’ . . . [For children of tender years,] the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm.” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 766–767.) Second, DCFS did present evidence of a specific risk of harm—mother drove under the influence of alcohol while Ashlee was in the vehicle. It goes without saying that driving under the influence is “extremely dangerous to human life.” (Veh. Code, § 23593.)

II. *Dispositional Orders*

A. Relevant law and standard of review

For a child to be removed from parental custody under section 361 subdivision (c)(1), DCFS has “the burden to prove by clear and convincing evidence that there is a risk of substantial harm to the child if returned home and the lack of reasonable

means short of removal to protect the child's safety. [Citations.]" (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992.)

Pursuant to section 361, subdivision (e), the juvenile court must "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home" and must "state the facts on which the decision to remove the minor is based." In making this determination, the juvenile court considers evidence including the DCFS report, which must, by rule, include a "discussion of the reasonable efforts made to prevent or eliminate removal and a recommended plan for reuniting the child with the family, including a plan for visitation." (Cal. Rules of Court, rule 5.690(a)(1)(B)(i).)

We review a removal order for substantial evidence. (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 136.)

B. Analysis

Mother asserts that DCFS did not comply with California Rules of Court, rule 5.690 because its reports did not discuss reasonable efforts that it made to prevent or eliminate Ashlee's removal from mother. We agree with mother. In its January 23, 2018, detention report, DCFS reported that "Reasonable Efforts were made to prevent or eliminate the need for the child(ren)'s removal from the home. The following Pre-placement Preventive Services were provided but were not effective in preventing or eliminating the need for removal of the child from the home." But, DCFS does not explain what reasonable services were made. And although DCFS represents that "[t]he following Pre-placement Preventive Services were provided," none is identified or listed.

In the April 12, 2018, jurisdiction/disposition report, DCFS again indicates under the heading “Reasonable Efforts,” that it provided the family with some services, including case management services and mental health referrals to mother, but it did not indicate what services were provided specifically targeted to prevent removing Ashlee from mother’s custody. The addendum report is also silent regarding such efforts.

Under these circumstances, we conclude that DCFS did not adequately discuss the reasonable steps it took to prevent the need for removing Ashlee from mother.

Contrary to DCFS’s suggestion, our holding that substantial evidence supports the juvenile court’s jurisdiction findings does not predetermine the question of whether the removal order was proper. The legal standards for both determinations are not the same (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 811 (*Ashly F.*); *In re Henry V.* (2004) 119 Cal.App.4th 522, 531), and the evidence in the appellate record is that Ashlee was in good health and had not yet suffered harm. The question is therefore whether there is substantial evidence for the juvenile court’s conclusion that, even after assuming jurisdiction over Ashlee, there were no reasonable means by which Ashlee’s health could be protected without removing her from mother’s custody. (§ 361, subd. (c)(1).)

In answering that question, we would normally look first to the facts cited by the juvenile court for why alternatives short of removal appeared insufficient; a recitation of such facts is required by the removal statute. (§ 361, subd. (e).) We cannot do so here, however, because the juvenile court provided no explanation at all for its removal and reasonable efforts findings. Nor can we imply findings for why the juvenile court may have

believed that measures short of removal were insufficient because the DCFS reports provide no evidence of any meaningful reasonable efforts that were undertaken, or considered but for some reason rejected. (See, e.g., *Ashly F.*, *supra*, 225 Cal.App.4th at pp. 809–810 [requirement for discussion by the child welfare agency of its reasonable efforts to prevent or eliminate removal and a statement by the juvenile court of the facts supporting removal play important roles in the dependency scheme].) Rather, the reports simply recite the steps taken by DCFS in its investigation, steps that we venture to say are taken in just about every investigation.

Our own examination of the appellate record leaves us convinced that removal may have been unjustified here. Ashlee was living with her maternal grandparents both before and during the pendency of this case. We wonder whether the juvenile court considered allowing Ashlee to remain with her maternal grandparents with mother also residing in the home, or whether Ashlee did not need to be removed from mother’s custody so long as they were residing in the maternal grandparents’ home. And mother has demonstrated her interest in addressing the issues that led to the filing of the section 300 petition in the first place—by the time of the second jurisdiction/disposition hearing, she participated in both parenting and a full drug treatment program. Under these circumstances, the juvenile court might have enlisted DCFS’s help without the need to remove Ashlee. (See, e.g., *Ashly F.*, *supra*, 225 Cal.App.4th at p. 810.)

Accordingly, we conclude that the removal order of the juvenile court is not supported by substantial evidence.⁵ The matter is remanded for a new disposition hearing, at which time the juvenile court shall consider the evidence of reasonable efforts made to prevent Ashlee's removal. If the juvenile court determines that reasonable efforts were made and that removal is still appropriate, it shall then state its reasons for why removal is necessary. (§ 361, subd. (e); Cal. Rules of Court, rule 5.690(a)(1)(B)(i).)

⁵ In light of our conclusion that the removal order is not supported by substantial evidence and that the matter must be remanded, we need not determine whether the order for monitored visitation is erroneous. On remand, if the juvenile court finds that Ashlee need not be removed from mother, then visitation becomes irrelevant. On the other hand, if the juvenile court finds that removal is necessary, it can then issue an appropriate order regarding visitation.

DISPOSITION

The juvenile court's jurisdictional findings are affirmed.
The dispositional order removing Ashlee from mother's custody is reversed and the matter is remanded for a new disposition hearing.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ